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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/659,429

09/11/2003

Darrin Viscount

14434

4086

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7590

12/12/2006

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EXAMINER

MATHEW, FENN C

ART UNIT

PAPER NUMBER

3764

DATE MAILED: 12/12/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/659,429

Applicant(s)

VISCOUNT, DARRIN

Examiner

Fenn C. Mathew

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3764

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 04 October 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) 16-20 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 11 September 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 09/11/03, 10/11/05, 12/29/05.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Applicant's election without traverse of Group I in the reply filed on 10/04/2006 is acknowledged. Claims 16-20 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 10/04/2006.

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-3, 7-8, and 10-11 are rejected under 35 U.S.C. 102(b) as being anticipated by Lay (U.S. 5,735,779). Referring to claim 1, Lay discloses a frame (5) having a handle (72, 73) disposed thereon, and a member (2, 3) extending from the frame for attaching one or more weights thereto, the member being substantially coplanar with the frame, wherein the handle swivels about its longitudinal axis. Referring to claim 2, Lay discloses the frame comprising four sides and the swiveling handle comprising one of the sides. Referring to claim 3, Lay discloses the member extending from the frame substantially parallel to the handle.

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4. Referring to claim 7, as seen in figure 2, Lay discloses a first frame having a handle disposed thereon, a second frame having a handle disposed thereon, a member (2) extending between the first and second frames for attaching one or more weights thereto, the member maintaining the first and second frames aligned such that their respective handles are substantially parallel to each other and distal to the member, wherein the handles swivel coaxially about their longitudinal axes, and wherein the member is substantially perpendicular to the longitudinal axis of the handles. Referring to claim 8, as broadly claimed, Lay discloses the frame comprising four sides with the swiveling handles comprising one of the sides. Referring to claim 10, Lay discloses the member further comprising an arm (3) for accepting weights, the arm extending substantially perpendicular to the member. Referring to claim 11, Lay discloses the arm extending from a midpoint of the length of the member.

5. Claims 1-2 and 4 are rejected under 35 U.S.C. 102(b) as being anticipated by Nelson (U.S. 5,435,800). Nelson discloses a frame (12) having a handle (40) disposed thereon, and a member (16) extending from the frame for attaching one or more weights thereto, the member being substantially coplanar with the frame, wherein the handle swivels about its longitudinal axis. Referring to claim 2, Nelson discloses the frame having four sides and the swivel handle comprising one of the sides. Referring to claim 4, Nelson discloses the member extending from the frame perpendicularly to the handle.

6. Claims 1-3 and 5-6 are rejected under 35 U.S.C. 102(b) as being anticipated by Marano (U.S. 4,964,631). Referring to claim 1, discloses a frame (12) having a handle

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(18) disposed thereon, and a member extending from the frame for attaching one or more weights thereto, the member being substantially coplanar with the frame, wherein the handle swivels about its longitudinal axis. Referring to claim 2, Marano discloses the frame comprising four sides and the swiveling handle comprising one of the sides. Referring to claim 3, Marano discloses the member extending from the frame substantially parallel to the handle. Referring to claims 5-6, Marano discloses means to attach the apparatus to a user's leg comprising a strap.

7. Claims 7 and 9 are rejected under 35 U.S.C. 102(b) as being anticipated by Jordan (U.S. 6,338,702). Referring to claim 7, Farmer discloses a first frame (104) having a handle disposed thereon, a second frame (114) having a handle disposed thereon, a member (112) extending between the first and second frames for attaching one or more weights thereto, the member maintaining the first and second frames aligned such that their respective handles are substantially parallel to each other and distal to the member, wherein the handles swivel coaxially about their longitudinal axes (note that Jordan teaches a cushioning sleeve which can inherently swivel to a degree on its longitudinal axis), and wherein the member is substantially perpendicular to the longitudinal axis of the handles. Referring to claim 9, Jordan discloses the member extending from a side of the first and second frames which is substantially parallel to the handle.

***Claim Rejections - 35 USC § 103***

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 12-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Marano alone. Marano discloses the claimed invention except for placing the device in a kit with instructions. The feature of incorporating devices into kits with instructions is notoriously old and well known in the art. It would have been obvious to one of ordinary skill in the art to incorporate the device of Marano into a kit with instruction in order to better facilitate retail sale.

10. Claims 14-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lay. Lay teaches the claimed invention including weights. The feature of incorporating devices into kits with instructions is notoriously old and well known in the art. It would have been obvious to one of ordinary skill in the art to incorporate the device of Lay into a kit with instruction in order to better facilitate retail sale.

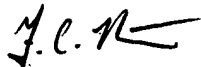
***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Fenn C. Mathew whose telephone number is (571) 272-4978. The examiner can normally be reached on Monday - Friday 9:00am - 5:30pm.

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The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



F.C. Mathew  
December 10, 2006